IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 817 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LARSEN AND TOUBRO LTD

Versus

INSPECTOR OF MOTOR VEHICLES

Appearance:

1. Special Civil Application No. 817 of 2005

MR BR GUPTA for Petitioner No. 1

MR HD DAVE ASST GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/04/2005

ORAL JUDGEMENT

When this matter is called out, Shri B.R.Gupta, the learned advocate appearing on behalf of the petitioner is absent. Under the circumstances, this Court

has no alternative but to decide and dispose of the present petition on merits exparte.

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction holding and declaring that the petitioner's crawler mounted equipment in question is neither a "Motor Vehicle" nor a "Construction Equipment Vehicle" under the Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989 respectively and therefore it does not require any registration as such under the said Act and the Rules before any RTO authority in the State of Gujarat. The dispute is in respect to Machine Serial No.F-0239520882 and Asset Code No.0230-005-2 which is being transported from petitioner' HZL site in Chittorgarh, Rajasthan to its IOCL Project site at Baroda in Gujarat State.

2. It is the contention on behalf of the petitioner that the equipment in question is a Crawler Mounted Equipment which is neither a "Motor Vehicle" nor a "Construction Equipment Vehicle" under the provisions of the Motor Vehicles Act, 1988 [hereinafter referred to as "the Act"] and Central Motor Vehicles Rules, 1989 [hereinafter referred to as "the Rules"] and the same does not require any registration under the said Act and therefore they are not liable to pay any tax on the same. Shri BR Gupta, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Bholani Ores Vs. State of Orissa, reported in 1974 (1) SCC to emphasize that the equipment in question is a Crawler Mounted Equipment and not a motor vehicle and therefore the respondent cannot recover tax on the equipment in question and that the same does not require any registration under the Act. Shri Gupta has further submitted that some 82 matters involving similar disputes were filed before this Court which came to be dismissed [As per Mr. Gupta not on merits but for non-removal of office objections] against which those petitioners have approached the Hon'ble Supreme Court and the Hon'ble

Supreme Court has issued notices and ordered that the interim relief granted by this Court shall remain in operation, and therefore he has requested to entertain the present Special Civil Application and continue the interim relief as prayed for.

3. On the other hand, Shri Hashit Dave, learned AGP appearing on behalf of the respondents has submitted that the question whether the equipment in question is a

Crawler Mounted Equipment or whether it can be said to be a "motor vehicle" or "a construction equipment vehicle" or not is required to be considered by the appropriate authority on production of the equipment in question and on adducing necessary evidence, and such disputed question of fact cannot be decided by this Court in a petition under Article 226 of the Constitution of India. He has further submitted that if on adducing evidence the authority comes to the conclusion that it is a motor vehicle or a construction equipment vehicle and tax is levied then in that case there is a further remedy available to the petitioner by way of appeal or revision application before the appropriate authority and therefore he has requested to dismiss the present Special Civil Application. He has relied upon the order passed by the Division Bench of this Court in Special Civil Application No. 545 of 2004 in the case of the very petitioner where the authorities had found that what the petitioner calls as equipment is a motor vehicle within the meaning of Bombay Motor Vehicles Act, 1958, and when the said decision was challenged by way of aforesaid Special Civil Application, this Court has declined to grant any interim relief, holding that the payment of motor vehicle tax paid by the petitioner on the equipment/motor vehicle will be without prejudice to the rights and contentions of the petitioner. He has therefore further submitted that if the interim relief as prayed for is granted and is continued, then in that case if the equipment in question is allowed to pass through Gujarat and if goes out of Gujarat then in that case the vehicle in question will not be available to the authority for the purpose of inspection and the authority will not be in a position to come to the conclusion on evidence whether the vehicle in question is a 'motor vehicle' or a 'construction equipment vehicle'. Therefore also, he has requested not to entertain the present Special Civil Application at this stage.

4. Heard the learned advocates appearing on behalf of the parties. It is the contention on behalf of the petitioner that the equipment in question is a Crawler Mounted Equipment and is neither a "motor vehicle" nor a "construction equipment vehicle" under the Act and the Rules and/or any other law in force and therefore the same does not require any registration and they are not required to pay any tax. The question whether the said equipment is a "motor vehicle" or a "construction equipment vehicle" or it is a "Crawler Mounted Equipment" as contended on behalf of the petitioner is required to be considered by the appropriate authority on production of the equipment for inspection with necessary evidence

to that effect. On consideration of such evidence the authority concerned is required to take a view or decision whether the equipment in question is a "motor vehicle" or a "construction equipment vehicle", and such equipment requires registration, levy of tax etc., or not. Unless and until there is a finding of the appropriate authority to that effect, it will not be possible while exercising the power under Article 226 of the Constitution of India to go into the said question and decide whether the equipment in question is a "motor vehicle" or a "construction equipment vehicle". Even if ultimately on appreciation of evidence and on inspection of the equipment the authority comes to the conclusion that it is a "motor vehicle" or it is a "construction equipment vehicle" and consequently it requires registration, levy of tax thereon etc., remedy available to the petitioner will be filing of an appeal or revision application before the appropriate authority. The present Special Civil Application is therefore not entertained at this stage.

4.1 It appears from the record that the equipment in question was being transported from petitioner's HZL site in Chittorgarh, Rajasthan to its IOCL project site at Baroda in Gujarat State and pursuant to the ad-interim order passed by this Court, the respondents were directed not to intercept or detain the equipment in question and the said equipment might at OCL Project at Baroda in Gujarat State. The respondents are directed to take an appropriate decision whether the equipment in question is "motor vehicle" or a "construction equipment vehicle" and it will be open for the petitioner to adduce further evidence before the authority in support of their contention that it is a "Crawler Equipment" and it is neither a "motor vehicle", nor a "construction equipment vehicle". If necessary, the respondents may insist upon the petitioner to produce the equipment in question for the purpose of verification, and if production is not possible, then it will be open for the petitioner to request the authority to depute any officer to the place where such equipment is lying at present for verification at the cost of the petitioner, which request may be considered by the authority. This direction is issued in view of the fact that pursuant to the ad-interim order passed by this Court, the equipment in question was permitted to be transported from Chittorgarh, Rajasthan to IOCL Project sit at Baroda, Gujarat State.

4.2. There is another reason also why such type of interim relief is not required to be granted and/or continued. The learned AGP, Mr. Dave is right in his

submission that if on deposit of some amount the equipment in question is allowed to leave Gujarat State without production of the equipment for inspection then in that case the equipment will not be available to the authority for inspection at a later stage. Hence, it is deemed fit that let a decision be taken by the respondents first after conducting an enquiry to satisfy whether the equipment in question is a "Motor Vehicle" or a "Construction Equipment Vehicle". In the facts and circumstances of the case, the respondents are directed to take an appropriate decision in accordance with law and on merits after giving an opportunity to the petitioner and conducting an inquiry as aforesaid as early as possible, but not later than two months from the date of receipt of this order.

4.3 Lastly, Shri H.D.Dave, the learned AGP has relied upon the judgment and order passed by this Court dated 24.3.2005 and other cognate matters and has submitted that in identical petitions, this Court has dismissed said petitions and has taken a view which is being taken in the present special civil application. It is also further submitted that against the said judgment and order dated 24.3.2005 passed in aforesaid Special Civil Application No.2579 of 2005 and other matters, Letters Patent Appeal No.496 of 2005, 497 of 2005 and 495 of 2005 were filed and the Division Bench of this Court had dismissed the aforesaid Letters Patent Appeals confirming the order passed by this Court in aforesaid Special Civil Applications. Considering the facts and for the reasons stated hereinabove and with the observations and direction, present special civil application is disposed of.

Notice is discharged. Ad-interim relief granted earlier by this Court stands vacated forthwith.

Date : 15.4.2005 [M.R.Shah, J.]
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